

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY

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 CIVIL ACTION NUMBER:  
4 IN RE: VALSARTAN PRODUCTS  
LIABILITY LITIGATION 1:19-md-02875-RBK-JS  
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 ORAL ARGUMENT  
(Via telephone)

6 Wednesday, May 13, 2020  
7 Commencing at 4:00 p.m.

8 B E F O R E: THE HONORABLE JOEL SCHNEIDER,  
UNITED STATES MAGISTRATE JUDGE

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10 A P P E A R A N C E S:

11 MAZIE SLATER KATZ & FREEMAN, LLC  
BY: ADAM M. SLATER, ESQUIRE  
103 Eisenhower Parkway  
12 Roseland, New Jersey 07068  
For the Plaintiff

13 LEVIN PAPANTONIO  
14 BY: DANIEL A. NIGH, ESQUIRE  
316 S. Baylen, Suite 600  
15 Pennsacola, Florida 32502  
For the Plaintiff

16 GOLOMB & HONIK PC  
17 BY: RUBEN HONIK, ESQUIRE  
1835 Market Street, Suite 2900  
18 Philadelphia, Pennsylvania 19103  
For the Plaintiff

19 Karen Friedlander, Official Court Reporter  
20 friedlanderreporter@gmail.com  
(856) 756-0160

21  
22 Proceedings recorded by mechanical stenography;  
transcript produced by computer-aided transcription.  
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**A P P E A R A N C E S : - C O N T I N U E D**

KANNER & WHITELEY LLC  
BY: CONLEE S. WHITELEY, ESQUIRE  
701 Camp Street  
New Orleans, Louisiana 70130  
For the Plaintiff

FARR LAW FIRM  
BY: GEORGE T. WILLIAMSON, ESQUIRE  
99 Nesbit Street  
Punta Gorda, Florida 33950  
For the Plaintiff

KIRTLAND & PACKARD LLP  
BY: BEHRAM PAREKH, ESQUIRE  
1638 South Pacific Coast Highway  
Redondo Beach, California 90277  
For the Plaintiff

GOLDENBERG LAW PLLC  
BY: MARLENE J. GOLDENBERG, ESQUIRE  
800 Lasalle Avenue  
Suite 2150  
Minneapolis, Minnesota 55402  
For the Plaintiff

DUANE MORRIS LLP  
BY: SETH A. GOLDBERG, ESQUIRE  
ALEXANDRA WALEKO, ESQUIRE  
30 S. 17th Street  
Philadelphia, Pennsylvania 19103  
For the Defendant ZHP and the Joint Defense Group

PIETRAGALLO GORDON ALFANO BOSICK & RASPANTI LLP  
BY: CLEM C. TRISCHLER, ESQUIRE  
One Oxford Centre, 38th Floor  
Pittsburgh, Pennsylvania 15219  
For the Defendant Mylan and the Joint Defense Group

GREENBERG TRAURIG LLP  
BY: BRIAN H. RUBENSTEIN, ESQUIRE  
3333 Piedmont Road, NE, Suite 2500  
Atlanta, Georgia 30305  
For the Defendants, Teva Pharmaceutical Industries Ltd.,  
Teva Pharmaceuticals USA, Inc., Actavis LLC, and Actavis  
Pharma, Inc.

**A P P E A R A N C E S : - C O N T I N U E D**

BARNES & THORNBURG LLP  
BY: SARAH E. JOHNSTON, ESQUIRE  
2029 Century Park East, Suite 300  
Los Angeles, CA 90067-2904  
For the Defendant, CVS Health Co.

ULMER & BERNE LLP  
BY: JEFFREY DANIEL GEOPPINGER  
600 Vine Street  
Suite 2800  
Cincinnati, OH 45202  
For the Defendant, AmerisourceBergen

**ALSO PRESENT:**

Loretta Smith, Law Clerk

1 (ALL PARTIES VIA TELEPHONE, May 13, 2020, 4:01 p.m.)

2 THE COURT: We're on the record in the matter of in  
3 re Valsartan, MDL Docket 19-2875. Today is May 13, 2020.  
4 We're holding this status conference, discovery conference,  
5 what have you, via phone.

6 Why don't we just have the entries of appearances. A  
7 lot of people on the phone. Probably just the people who are  
8 going to talk, to enter their appearance, and for the benefit  
9 of the court reporter, if anyone else is going to speak during  
10 this conference call, just say your name first, then we'll  
11 hear you. Anyone who wants to be heard of course will be  
12 heard.

13 Who's on the line for the plaintiff?

14 MR. SLATER: Hello, Your Honor, Adam Slater.

15 MR. HONIK: Good afternoon, Your Honor, Ruben Honik.

16 MR. WILLIAMSON: Good afternoon, Your Honor, this is  
17 George Williamson.

18 MS. WHITELEY: Good afternoon, Your Honor, this is  
19 Conlee Whitely.

20 MS. GOLDENBERG: This is Marlene Goldenberg.

21 MR. PAREKH: This is Behram Parekh.

22 THE COURT: Okay, how about just defendants.

23 MR. GOLDBERG: Your, Honor, for ZHP and the joint  
24 defense group, this is Seth Goldberg.

25 MR. TRISCHLER: Good afternoon, Your Honor, Clem

1 Trischler for Mylan Pharmaceuticals and the defendants'  
2 executive pleading.

3 THE COURT: Okay. Great.

4 MS. JOHNSTON: Good afternoon, Your Honor this is  
5 Sarah Johnston for the retailer defendants.

6 MR. GEOPPINGER: Good afternoon, Your Honor, this  
7 Jeff Geoppinger, G-E-O-P-P-I-N-G-E-R, on behalf of the  
8 wholesalers defendants and AmerisourceBergen.

9 THE COURT: Okay. Just to repeat --

10 MR. RUBENSTEIN: And -- sorry. Brian Rubenstein from  
11 Greenberg Traurig for Teva and the defendants.

12 THE COURT: Okay. Go ahead.

13 MS. SMITH: Judge and Karen, I don't think you need  
14 to record me. This is Loretta Smith.

15 THE COURT: Okay. Thank you, Loretta.

16 Okay. Counsel, I received your letters. I  
17 appreciate it. We'll discuss all the issues that you listed  
18 in the letter. If you'll just indulge me, there's just a  
19 couple of miscellaneous issues I just want to get out of the  
20 way before we get into your agenda. I wanted to start by  
21 saying understandably the case has been delayed a little bit  
22 in the progress of the case because of the crisis we're all  
23 dealing with. It's perfectly understandable. We're still  
24 dealing with an unusual situation, but we've all had enough  
25 time, I think, hopefully, to get back in the matter a little

1 bit. So the hope is we'll get the case back on track and pick  
2 up the momentum that we had before the crisis hit.

3 I just wanted to confirm with the parties what the  
4 Court's understanding is of what we have to look forward to in  
5 the upcoming foreseeable future. Just to summarize to make  
6 sure we're all on the same page, my notes indicate that  
7 May 15th, 2020, the defendants are going to produce the sales  
8 and pricing documents. If it hasn't already been done, the  
9 plaintiffs were going to identify priorities in terms of  
10 production. Defendants' rolling production of their documents  
11 is scheduled to start on July 15, 2020. Thereafter, rolling  
12 productions are going to be done on at least September 1st,  
13 October 1 and November 1, with a target date to complete the  
14 productions by November 29th, 2020.

15 So those are the deadlines that the Court noted. Of  
16 course we're going to discuss dealing with the ESI search  
17 terms and the briefing schedule requests. We'll deal with  
18 that on this phone call.

19 We have our conference scheduled for the end of the  
20 month. I know when we spoke with Judge Kugler, he indicated  
21 it might be an in-person conference. Obviously, I'm going to  
22 touch base with him and we'll see where we are, whether we're  
23 going to convert that to a phone conference or not. Just  
24 depends on developments as we go forward in the next week or  
25 two.

1           And the last thing was an issue that Loretta brought  
2 to my attention today. BrownGreer I think is keeping control  
3 and a record of all the cases and the information in the  
4 cases. One thing they're not getting, I understand, is a  
5 record of when cases are being dismissed. So is there a way  
6 that somehow they can be informed when a case is dismissed so  
7 they can note it for their records?

8           MR. PAREKH: Your Honor, this is Behram Parekh. We  
9 have asked Brown Grier to set up a system where the dismissing  
10 firm is supposed to check a box any time they dismiss their  
11 case. We will make sure that firms that have dismissed their  
12 cases know about that. We also have the ability to do that  
13 administratively as leadership and we will work to make sure  
14 that all of those are reflected correctly, Your Honor.

15           THE COURT: Fantastic. So I think it's in all of our  
16 interests that they be kept up to date on the status of all  
17 the cases.

18           There were two more -- I'm looking at my notes.  
19 There were two more miscellaneous issues before we get into  
20 the agenda. Have the parties hopefully, this is ZHP, worked  
21 out the Mandarin translation issue with the plaintiffs?

22           MR. GOLDBERG: I'm not sure. We did agree back in  
23 January on a set of Mandarin search terms. We are in the  
24 process of collecting the information and I believe Joe  
25 Ferretti from my office is in touch with Behram. I don't know

1 that there's any issue right now, but I suspect we'll be  
2 discussing with plaintiffs any issues with respect to the  
3 translated search terms.

4 MR. PAREKH: Your Honor, this is Behram Parekh. We  
5 haven't encountered any issues so far. I've been in touch  
6 with Mr. Ferretti about a few sort of discreet issues  
7 regarding paper documents and things. We don't have anything  
8 current.

9 MR. SLATER: This is Adam Slater. I thought maybe  
10 you were asking about translation for depositions. Is that  
11 what you were getting at?

12 THE COURT: No, no, we haven't got into depositions  
13 yet, Mr. Slater. This is just about the documents.

14 MR. SLATER: Okay.

15 THE COURT: I just want to -- if there's an issue,  
16 counsel, I want to know about it, because going forward  
17 hopefully we can avoid any delays that are caused by issues we  
18 could work out now, instead of later.

19 MR. GOLDBERG: Your Honor, I appreciate that. We  
20 are -- as I mentioned, we are in the midst -- we've been  
21 collecting information from the various ZHP entities over the  
22 last few weeks and are hopefully coming to the end of the  
23 process of collecting and are trying to identify any issues as  
24 we are doing that and raising them with Mr. Parekh, and we  
25 intend to raise them as quickly as we can identify them with

1 plaintiffs and then come to the Court with any that we can't  
2 resolve.

3 THE COURT: Okay. It doesn't sound like there's any  
4 disputes to address now. But like I said, if there are  
5 disputes, we'd like to address them so they don't cause any  
6 delay.

7 The other miscellaneous issue and the last one is  
8 right before the crisis hit, there was an issue about the new  
9 foreign defendants who came in the case, Hetero and Aurobindo,  
10 and giving them a deadline for them to produce their core  
11 documents, and if they can't agree with plaintiffs on the  
12 relevant time discovery, to set that relevant time period for  
13 discovery like we did for the other parties.

14 Are those issues still left in the air?

15 MS. HUDSON: Your Honor, can you hear me?

16 THE COURT: Yes.

17 MS. HUDSON: This is Lauren Hudson on behalf of  
18 plaintiffs. I've been in discussions with Hetero regarding  
19 some of the issues with respect to the more substantive  
20 discovery versus the core discovery. I don't believe we have  
21 -- we just received today production of additional core  
22 discovery from Hetero and Aurobindo. I'm not -- I would have  
23 to -- I haven't had the opportunity to review that material  
24 yet, but we are in those discussions at least with Hetero and  
25 Aurobindo.

1 But as we said first to Hetero on a call weeks ago,  
2 we were still waiting on certain expects of their core  
3 discovery production, mainly the establishment inspection  
4 reports in order to identify things like key custodians -- in  
5 order to have more substantive negotiations regarding key  
6 custodians for the Indian Aurobindo and Hetero entities, we  
7 informed counsel that we really needed the production of  
8 establishment inspection reports that had been required as  
9 part of core discovery in order to have more fruitful  
10 discussions. I'm hopeful that perhaps some of the productions  
11 we received today from Hetero and Aurobindo included these  
12 documents so that we can sort of backtrack those discussions  
13 of custodians and relevant time period.

14 THE COURT: Counsel, here's what I -- I think we need  
15 to set this up preliminarily. One, I want to set a deadline  
16 when their core discovery is going to be complete; and two, I  
17 want to amend the existing order to set a relevant timeframe  
18 for these two entities to produce their discovery. I think I  
19 want to use the same -- we're going to use the same formula  
20 that we used for everyone else as to that, when they started  
21 producing this product, or something to that effect, and a  
22 year prior to that.

23 We don't need production of documents to get to the  
24 bottom of that. So I'm going to make a note by the next  
25 conference, the end of the month, I want to include that in

1 the order.

2 So see if you can come to an understanding, an  
3 agreement on the relevant timeframe for these two entities.  
4 If not, I'll set it, see if you can come to an agreement on  
5 when they're going to complete their core production  
6 discovery, and if you don't come to an agreement, I'll just  
7 set it.

8 MS. HUDSON: Okay. Thank you, Your Honor.

9 MR. GOLDBERG: Your Honor this is Seth Goldberg.  
10 Just on that point, I don't know if counsel for Hetero or  
11 Aurobindo are on the line, and if not, then I'll certainly  
12 relay the message to them so that they can get in touch with  
13 plaintiffs and try to work these things out.

14 MR. WRIGHT: Your Honor, this is Grant Wright. I'm  
15 counsel for Hetero Labs in India and my co-counsel Nakul Shah  
16 is also on the line.

17 THE COURT: Mr. Wright, I take it you understand the  
18 Court's directions to plaintiffs' counsel.

19 MR. WRIGHT: Yes, Your Honor, we did, and the recent  
20 production that was made this week did include the EIR that  
21 counsel said that she was looking for. -

22 THE COURT: All right. So by the end of the month,  
23 we are going to set an outside date for the completion of the  
24 core discovery production, including the Court order, the  
25 relevant timeframe when you have to produce discovery, okay?

1 MR. WRIGHT: Thank you, Your Honor.

2 THE COURT: Let's go to the agenda now. First issue,  
3 ESI search terms. I'm aware of the dispute between the  
4 parties, of course I've read your letters. I have a couple of  
5 questions before we hear any argument on this. I know Mylan  
6 has taken the lead on this discussion and talked about why it  
7 believes search terms need to be reduced. I haven't seen  
8 anything specific to any other parties. Is the only  
9 discussion that's ongoing is that having to do with Mylan?

10 MR. TRISCHLER: Good afternoon, Your Honor. This is  
11 Clem Trischler. I can take, with the Court's permission, I  
12 can take an initial crack at responding to the Court's  
13 question, and if any of my colleagues want to add anything,  
14 I'd certainly invite them, but we have taken the lead on  
15 behalf of the defendants and have submitted information that  
16 we believe is supportive of the request to amend the search  
17 terms. Much of that information links to results that Mylan  
18 has seen from searches that we have run. The counterproposal  
19 that we initially submitted to plaintiff back in March to  
20 revise the search terms, Judge, has since been adopted by all  
21 of the manufacturing defendants with, you know, some small  
22 exceptions. But for the most part, that original  
23 counterproposal has been adopted by the group. I believe that  
24 other defendants have submitted data to the plaintiffs,  
25 including Teva, for instance, that outlines the volume of the

1 search that the documents, I should say, they're being  
2 captured by the search and the need for revisions. And so I  
3 think that it's fair to say that it's a collective response  
4 that up until this point has mostly been supported by data  
5 collected by Mylan, but our defendants are joining in the  
6 request.

7 THE COURT: How can the Court consider whether the  
8 search terms for someone other than Mylan could be changed if  
9 those parties haven't provided plaintiff with the information  
10 that plaintiffs need to evaluate their contention of overbroad  
11 and over burdensomeness?

12 MR. TRISCHLER: I think, Your Honor, what we had said  
13 at the meet and confer is to submit examples of what we've  
14 seen from running the searches, where the searches can be  
15 improved upon, where documents could be limited -- I think --  
16 or excuse me, where unnecessary production can be limited. I  
17 think what Mylan has done is representative of what all the  
18 defendants have seen and I think that if we get to the motion  
19 stage, which I think, unfortunately, we are headed there,  
20 because I don't see this being resolved, acts of motion  
21 practice, I certainly recognize the Court's point and I think  
22 it's a fair point that that motion would have to be supported  
23 by evidence from all of the defendants if the Court was to  
24 modify their search terms globally. But I think we're  
25 prepared -- we will be prepared to do that.

1 THE COURT: I want to ask plaintiff, I note Mylan has  
2 provided some data. I know that plaintiffs contest that data.  
3 I've read the 44- or 45-page letter, but have plaintiffs  
4 received data from anyone besides Mylan to support a  
5 contention of overbreadth or overinclusiveness?

6 MR. SLATER: Hello, Your Honor, it's Adam Slater.  
7 The only thing that was given was -- I think it might have  
8 been the last letter to the Court, some numbers were given by  
9 Teva on gross numbers of hits on documents as well as the  
10 gross numbers documents of, I believe, gross numbers of  
11 documents themselves. I think that is the only thing we've  
12 been provided, which is we've laid out in the letter is not  
13 sufficient for us to make any decision.

14 And just so you know, Your Honor, also as Mr. Parekh  
15 said, he's on, and we also have our ESI lead discovery expert  
16 on, Mr. Jaffe, in case there are any technical questions we  
17 wanted to be able to be as responsive as possible to Your  
18 Honor today on this call. So he's on with us.

19 THE COURT: The other question I had, before we open  
20 up the floor for any argument on this issue, I did a little  
21 bit of investigation and background work before this call to  
22 prepare for this call, a look at the record regarding the ESI  
23 search terms. We know about the Court's order in December,  
24 attaching Exhibit H, which was the agreed-upon search terms.  
25 I've read through the transcripts of the arguments. All the

1 objections were ruled upon. There were relatively few of  
2 them.

3           The procedure that the Court approved and blessed was  
4 in appendix -- or Exhibit H and in Mr. Slater's December 10,  
5 2019 letter, Docket No. 316 at Pages I think 8 to 10, I'm not  
6 a hundred percent positive if this is incorporated into the  
7 court-approved exhibit, but there was some sort of discussion  
8 in Mr. Slater's letter about some sort of protocol for testing  
9 and if too many documents showed up, they would work on this  
10 and work on that.

11           My question was, is the party's present dispute under  
12 the procedure that the parties agreed, or is this something  
13 new that the defendants are raising, and why isn't the  
14 protocol or procedure that the parties agreed upon being  
15 followed?

16           MR. SLATER: Your Honor, again it's Adam Slater. If  
17 I recall, and I don't have the document in front of me, but my  
18 recollection is that we were asking to have testing done while  
19 we were developing the search terms, and the defense did not  
20 want to do that. They said they were comfortable that the  
21 search terms were reasonable and they did not want to do  
22 testing and sampling as we negotiated, which is something  
23 that's often done, as Your Honor is well aware.

24           As Your Honor knows, afterwards, after the terms were  
25 established and we've laid it out in the letter, only Mylan

1 contacted us with a discreet couple of issues specific to only  
2 Mylan. No other defendant contacted us and then Mylan  
3 ultimately came in with what they came with in with March, and  
4 I'm not going to regurgitate the letter to Your Honor and I'll  
5 wait for the specific questions, but the answer is no.

6 We never contemplated that the defense would take  
7 this long, give us dribs and drabs of information and then  
8 ultimately come to us with what we think is a very substantial  
9 materially changed set of search terms and we've laid out in  
10 the letter why it is so incredibly prejudicial and based on  
11 inadequate methodology and then -- and do that in the face of  
12 not having done most of the relevant and necessary sampling of  
13 testing that would be needed, all of which would need to  
14 happen, for example, after de-duplication and e-mail  
15 threading, et cetera.

16 So, what we were contemplating never in a million  
17 years did we contemplate the process the defense has proposed  
18 to us, and just to foreshadow, not that there's any surprise,  
19 Mr. Trischler is talking about robust or heavy motion  
20 practice. Our request is going to be for the Court to shut  
21 this down completely so we can move on where the document  
22 productions are supposed to be imminent and we now have a  
23 concession that they hadn't even put the documents on their  
24 vendor's platforms yet. We feel like in light of where things  
25 are that it's far too late to start such a briefing process,

1 and that in light of what we've presented, we've established  
2 that the search terms should just be run.

3 (Cross talk)

4 THE COURT: Hold on, Mr. Trischler. You'll get every  
5 opportunity to be heard, but I don't think, Mr. Slater -- you  
6 probably don't have the letter in front of you, so you weren't  
7 referring to what the Court is referring to.

8 In your December 10th, 2019 letter, I have it in  
9 front of me, Page 8, this is what it says, quote: The parties  
10 have devised and agreed upon the attached -- upon the detailed  
11 method described below for further evaluating disputed search  
12 terms while simultaneously reviewing and producing  
13 noncustodial documents and documents resulting from undisputed  
14 search terms, period, close quote.

15 Okay. This is on December 10, talks about the  
16 standalone terms, manufacturing medical conditions, economic  
17 terms, entities, et cetera. So there was a procedure that was  
18 agreed upon that if there was a dispute as to certain terms or  
19 certain issues, this is how the parties were going to work it  
20 out.

21 My question was whether what defendants had raised  
22 now is pursuant to what was agreed upon as set forth in this  
23 December 10 letter, or as I suspect you're contesting -- or  
24 intending, excuse me, it's just a new issue that you didn't  
25 anticipate.

1 MR. SLATER: Right. I'm going to hand this to  
2 Mr. Parekh in a second, but it's my understanding now that  
3 you've read that, and I appreciate that, Your Honor. That is  
4 what I was saying a moment ago is, what happened in January is  
5 what is contemplated, where they came to us and said, you  
6 know, we have a problem with this and it's recited in our  
7 letter that we sent which was attached to the Court, and they  
8 had a problem with a few different things and we spoke to them  
9 about it and a few things we thought got worked out and then  
10 one of them we never got a response on the other drug names  
11 issues.

12 That's how we thought it would proceed, but again,  
13 what you just read is, that was supposed to happen while they  
14 were processing all the documents and producing documents to  
15 us and as they saw an issue talking to us. That is not what's  
16 contemplated by that letter, and I'll defer to Mr. Parekh if  
17 he wants to, you know, supplement that, because he's very  
18 involved in this was well.

19 MR. PAREKH: Sorry, Your Honor.

20 THE COURT: I wanted to hear from you before we go to  
21 Mr. Trischler.

22 MR. PAREKH: Sure, Your Honor. I was the person who  
23 negotiated this with Mr. Ferretti from ZHP's counsel, and the  
24 purpose of the procedure was to -- as defendants were  
25 collecting and searching these documents and they ran across

1 specific issues with search terms or with a specific search  
2 term and, you know, we had some discreet issues that we could  
3 work out, that that was the procedure to be followed and we  
4 identified, you know, the categories where we thought some of  
5 these things might come up and where we thought that we could  
6 work things out in that procedure.

7           It was never contemplated by either party, and I  
8 apologize, I don't believe Mr. Ferretti is on the phone, but,  
9 I mean, the thought was never from our perspective at least  
10 that we would have to do a complete and wholesale revision as  
11 the the entire process as agreed to search terms, which is  
12 what Mr. Trischler proposed back in March. What we thought we  
13 were going to do was exactly what they proposed in January,  
14 which is they identified five or six discrete issues and we  
15 would work those out and figure out how to deal with those.

16           But the problem that we're having is, you know,  
17 they're essentially starting over from scratch at this point  
18 and trying to renegotiate virtually everything, including how  
19 the modifiers worked across the board. And that is not what  
20 that procedure was designed for.

21           THE COURT: Okay. Let's hear from Mr. Trischler.

22           MR. TRISCHLER: Thank you, Your Honor. This is Clem  
23 Trischler. And I think the Court began this discussion by  
24 raising a very fair and meaningful question, and I'll address  
25 it head on. And essentially what you asked, Your Honor, is

1 the procedure that we formalized with the counterproposal in  
2 March, what was contemplated by the Court's order, and the  
3 answer is absolutely yes.

4 And Your Honor mentioned the December 23 order, it's  
5 Docket No. 328, and the procedure for the search terms is  
6 outlined on Pages 55, 56, and 57 of that order. It talks  
7 about a number of things, but on Page 55 of Docket 328, one of  
8 the things it talks about are the standalone search terms.  
9 And what the order itself states is, quote: The following  
10 terms have remained on the stand-alone terms list, but can be  
11 tested and refined further if needed and as shown.

12 That's precisely what we did with a number of the  
13 standalone terms in the counterproposals, precisely what is  
14 contemplated in that order, Your Honor.

15 Another thing that we did, if you go to the next page  
16 of that order, the parties had long discussions about search  
17 terms related to establishment inspection reports, Form 483s.  
18 How those terms were to be handled was specifically called out  
19 in the December 23 order, and what the order states is that  
20 again with respect to these documents when used against data  
21 of custodians in management, these search terms will be run as  
22 standalone terms but can be tested and refined further if  
23 needed.

24 And again, we ran the searches as contemplated and  
25 have demonstrated a need for it and have brought that first to

1 the attention of the plaintiffs and now to the Court.

2 And lastly, Judge, you know, this has been constantly  
3 portrayed and I think it's a bit of a false narrative is that  
4 when this order was entered in December, that it was a fait  
5 accompli, that this is how it's all going to be perceived, and  
6 that was never the case.

7 If we go again to Page, I believe it's 57 of Docket  
8 328, there were 31 terms completely objected to by the  
9 defendants, and those terms -- Your Honor mentioned that you  
10 had a chance to read the 41-page exhibit that the plaintiffs  
11 attached to their agenda that we only served yesterday. Many  
12 of those objections or terms are highlighted in yellow if Your  
13 Honor went through and read that. And what was agreed to and  
14 what was ordered with respect to those terms was that the  
15 defendants will run hit counts against the search string  
16 agreed upon for each term highlighted in yellow, and if  
17 there's a need to amend them, the parties would meet and  
18 confer on how to do that. That's again precisely what we've  
19 done.

20 So I submit to the Court that what the defendants  
21 have done here is follow to a T what was contemplated in the  
22 December 23 order.

23 The plaintiffs' objection appears to be that it's not  
24 happened as rapidly as they would like, but we raised issues  
25 in January. The issues we raised with them in January were,

1 you know, were handled mostly by attorneys in my office and  
2 was, frankly, Judge, the low hanging fruit that we started  
3 with. We raised it again in February and we submitted the  
4 counterproposal in March and we are following the protocol in  
5 the process and it's spelled out in the order, and the  
6 counterproposal that we submitted was covered precisely, the  
7 terms and the manner in which the Court and the parties agreed  
8 to back in December.

9 MR. GOLDBERG: Your Honor, this is Seth Goldberg.  
10 Can I just weigh in on one point with respect to ZHP?

11 THE COURT: Sure.

12 MR. GOLDBERG: Which is simply that ZHP is in the  
13 midst of applying the search terms to collect the information  
14 and we fully intend to follow the process that was agreed upon  
15 in December. Due to the coronavirus, we did not have the  
16 chance to test any terms in January, February, March, and  
17 April, but we fully intend to do that now and to utilize this  
18 process. But I can say that given Mylan's results and given  
19 that ZHP has almost twice as many custodians, we fully  
20 anticipate that there's going to be a lot of false -- a lot of  
21 false positives with the search terms and we need to have the  
22 opportunity to work through this process.

23 THE COURT: Well, let me say this. We'll brief the  
24 issue somehow, but the Court has already indicated that this  
25 dispute will not, repeat "not" stay the deadlines that the

1 Court has imposed. The current deadline for the defendants to  
2 start their rolling production of responsive documents is  
3 July 15th. That deadline is cast in stone. So whether or not  
4 we revise the search terms, it does not stay or delay that  
5 deadline. There are certainly categories and terms and  
6 connectors, what have you, that are not in dispute. They have  
7 to be applied, and the undisputed documents have to be  
8 produced.

9 When the Court agreed to the deadlines that  
10 defendants proposed, it obviously took into account the crisis  
11 we're in, and even though it was pretty liberal, liberal  
12 deadlines over plaintiffs' objections, we put them in place  
13 and the Court had indicated that it's not going to stay those  
14 deadlines or delay those deadlines any further, except if we  
15 have some unforeseen crisis like this corona crisis we're  
16 going through. This dispute over search terms is not the sort  
17 of unanticipated event that will work to delay the Court's  
18 deadlines.

19 So, Mr. Trischler, I want to put it in your hands.  
20 You tell me. If we go through a formal motion practice, the  
21 earliest I'm going to decide the issue is the middle of June,  
22 okay? The July 15 deadline is not changing, so we can do it  
23 on letter briefs, we'll get a schedule and I'll decide it when  
24 we get together in two weeks. You know, what do you prefer?

25 MR. TRISCHLER: Well, Your Honor, I thank you for

1 giving me the option. I would like, since this affects more  
2 than just my client, I'd like some time to --

3 THE COURT: We've got to decide it today. We're  
4 deciding it today. I'm not delaying this. If you don't want  
5 to decide it, I'll decide it. I mean, you're either going to  
6 get an answer on the 27th or the 17th of June. If I decide it  
7 on the 17th of June, it gives you less than 30 days to make  
8 the first fulsome rolling production. If I decide it on the  
9 27th, it gives your client 45 days to make that fulsome first  
10 production. What do you --

11 MR. TRISCHLER: I am fine either way, Judge. If the  
12 there is another defendant that feels as strongly about it, I  
13 would like someone to make a suggestion, but I'm fine with  
14 whatever the Court wants to order.

15 THE COURT: Okay. Well, Mr. Goldberg, you want to  
16 weigh in?

17 MR. GOLDBERG: Yeah, I do want to weigh in on this  
18 specific point that -- for ZHP, because ZHP is in a different  
19 position than the defendants on this. Here we have not had  
20 the opportunity to do what Mr. Parekh says this was intended  
21 to, which is to work with plaintiffs to know the list based on  
22 the information we are getting as we are conducting the  
23 searches. And we have not, ZHP, due to the coronavirus, has  
24 not been given the opportunity to use this agreed-upon method,  
25 and it's almost like we are now being punished in a way

1 because of the coronavirus.

2 I don't know if the search term -- I'll give you an  
3 example that I do know of. One of the search terms is the  
4 name Wang, because there is an FDA inspector named Wang, and  
5 surely at ZHP we have dozens of Wangs that are coming up in  
6 the searches. But because we're only in the midst of this  
7 now, we have not been able to go to plaintiffs with these  
8 issues and I -- we joined with the defendants in the notion  
9 that the search terms are overly broad and need to be revised.  
10 But for ZHP, we need to have the opportunity to use the  
11 process that the parties agreed upon and that the court  
12 endorsed.

13 THE COURT: Here is the Court's order, that by  
14 May 27th defendants file one motion asking to change the  
15 search terms. I'm not dealing with generic issues. Each  
16 defendant is going to have to show good cause why they think  
17 the search terms should be changed. Plaintiff will respond on  
18 June 10th and I'll decide the issue on June 17th, okay?  
19 Plaintiffs want to reply on June 15, that's okay. I'll decide  
20 the issue on June 17, but the July 15 date is not changing,  
21 counsel, so just keep that in mind. We're going to start to  
22 get these documents rolling in the case. I gave the  
23 defendants exactly what they asked for, July 15, and we'll  
24 stick with it, okay?

25 MR. TRISCHLER: Understood, Your Honor. Thank you.

1 THE COURT: I'm just making a note. Okay. Next  
2 issue is defendants' fact sheets. Are you still working on  
3 that? Is the only dispute whether the defendants are going to  
4 have to provide Bates numbers for specific document requests?

5 MR. GOLDBERG: Your Honor, right now, if you're  
6 referring to the manufacturer defendant fact sheets --

7 THE COURT: Yes, exactly.

8 MR. GOLDBERG: Yeah. The Court issued an order  
9 setting the parameters for what the manufacturer defendant  
10 fact sheets need to be. We revised the defendants' fact  
11 sheets according to the order, gave the plaintiffs the revised  
12 set. We just received back from them edits to our proposal  
13 last night. So, we're going to try to work with plaintiffs on  
14 this and hopefully, you know, either be able to bring to Your  
15 Honor any remaining disputes at the end of the month or have  
16 an agreement.

17 THE COURT: Okay, great. We will finalize those on  
18 the 27th. Is that okay, Mr. Slater?

19 MR. SLATER: Absolutely, Your Honor.

20 THE COURT: Okay. Prioritization of document ESI  
21 discovery. I think I saw a letter indicating that that was  
22 done. Am I right?

23 MR. SLATER: We have sent a letter to the defense  
24 after having a conference with them and speaking to them and  
25 they have in their hands our requests. We don't know what the

1 defense response is to whether they intend to accommodate it,  
2 but what I guess, you know, our assumption is they will,  
3 unless they tell us to the contrary.

4 THE COURT: Okay.

5 MR. GOLDBERG: Your Honor, we received the letter and  
6 I believe it was on Monday or maybe it was Friday of last  
7 week, and we'll evaluate the letter and get back to plaintiffs  
8 on it.

9 THE COURT: Okay. You'll let us know if there is any  
10 objections for the 27th conference.

11 Next issue is the briefing schedule. I've  
12 communicated with Judge Kugler, counsel. The dates that the  
13 parties proposed are agreeable. You caught Judge Kugler on a  
14 good day. He's going to give you more pages, but not as many  
15 as you asked. I'm just looking for his e-mail. Bear with me.  
16 Bear with me one second, counsel. Here it is. As I  
17 understand it, it's going to be three motions, each one  
18 directed to one of the complaints. Is that right?

19 MR. GOLDBERG: No, Your Honor, that is not our  
20 intention. Our intention is to have three motions, one on  
21 behalf of --

22 THE COURT: Oh, I'm sorry.

23 MR. GOLDBERG: Yeah, go ahead.

24 THE COURT: One on behalf of each group, right?

25 MR. GOLDBERG: Right. It's going to be supply chain

1 specific with probably the manufacturer defendant brief will  
2 address common issues that can be resolved across all of the  
3 levels of the supply chain, with the wholesaler brief dealing  
4 with wholesaler unique issues, and the retailer brief dealing  
5 with retailer-specific issues.

6 THE COURT: Right. So he said 80 pages for the  
7 opening brief, 80 pages for the reply brief -- for the  
8 response brief and 40 pages for the reply brief. And I gotta  
9 tell you, that's the most pages I've ever seen Judge Kugler  
10 grant. So you got a him in a good mood.

11 MR. GOLDBERG: I trust, Your Honor, we can use those  
12 pages as we see fit across the three briefs.

13 THE COURT: You mean make one brief a hundred, and  
14 one --

15 MR. GOLDBERG: No. So he's thinking 80 pages for  
16 each of the briefs.

17 THE COURT: Yeah. What were you thinking?

18 MR. GOLDBERG: Well, we were thinking of having --  
19 when we made our proposal for 120 pages, we were thinking  
20 120 pages total for the three briefs. One might be 60, one  
21 might be 40, the other might be --

22 THE COURT: Oh, okay. Oh, I see. No, that would be  
23 great. 80 total for the three would be great.

24 MR. GOLDBERG: Well, I think, you know, we would  
25 prefer to have 120 total or a hundred total. I think it would

1 be very hard for us to do all three with 80 total.

2 THE COURT: Counsel, you'll have to take it up with  
3 Judge Kugler because that's what he directed.

4 MS. SMITH: Judge Schneider, this is Loretta. I was  
5 listening to some confusion and I will take it to Judge  
6 Kugler.

7 MR. HONIK: Your Honor, this is Ruben Honik, if I  
8 may. I was the one principally meeting and conferring with  
9 Mr. Goldberg about these matters, and candidly, we -- I had  
10 proposed what I thought the Court had initially said, which is  
11 to say one brief for each of the three master complaints which  
12 would be the conventional way in which Rule 12 motions are  
13 brought. I'm just wondering, maybe aloud at this point,  
14 whether there may be some unnecessary confusion if its really  
15 done across the type of defendant in question.

16 So, for example, are we to expect that the  
17 manufacturers are going to file a single omnibus Rule 12  
18 motion that cuts across medical monitoring, economic class,  
19 and bodily injury issues? And I'm wondering if there  
20 shouldn't be a directive to -- for the defendants to confine  
21 themselves to the 80 pages proposed by Judge Kugler and to  
22 have an omnibus motion for each of the complaints.

23 So, for example, as to the economic class complaints,  
24 which comprise the consumer economic claims and the TPP  
25 claims, that each of the defendants in an omnibus single

1 motion bring whatever Rule 12 issue they want to bring and  
2 similarly for each of the other complaints. That's what we  
3 had proposed to Mr. Goldberg, and initially, they had proposed  
4 to us a total of a hundred pages and in the most recent  
5 conferral they bumped it up to 120 pages.

6 But I think both issues are relevant, that is, the  
7 number of total pages and how the issues are divided so that  
8 they can be digested in the most sensible way by the parties,  
9 but certainly by the Court as well.

10 And we just think it makes sense to do it by each of  
11 the master complaints.

12 THE COURT: So, Mr. Goldberg, is what you envision --  
13 take the economic complaint. Do you envision that there would  
14 be three motions to dismiss -- that portions of three motions  
15 to dismiss, three separate -- okay, trying to get this  
16 straight.

17 Each of the three groups would file a motion to  
18 dismiss portions of the economic complaint directed to them.

19 MR. GOLDBERG: Our proposal would be, it would be  
20 three briefs. One would be filed by the manufacturer  
21 defendants. That brief would discuss the factual allegations  
22 and the claims that are pertinent to all of the manufacturer  
23 defendants and that are also pertinent to the wholesalers and  
24 the retailers.

25 Then the wholesalers would file a motion that would

1 be limited to those claims and factual allegations that are  
2 truly unique to the wholesalers, such as the Drug Supply Act,  
3 or innocent seller statutes. Similarly, the retailers would  
4 have a brief that would be focused on retailer-specific issues  
5 so that the Court when it's revealing the motions to look at  
6 the manufacturer defendants' brief and say, okay, here's the  
7 bulk of the issues, here are the common issues, the common  
8 allegations across our supply chain and I can rule on these  
9 issues and I know I'm covering the manufacturer defendants,  
10 and to the extent those issues are common, the wholesalers and  
11 retailers, I can decide that.

12 But if the Court wants to focus only on the  
13 wholesaler issues, it can look at the wholesaler brief, and if  
14 the Court wants to focus on the retailer issues, it can look  
15 at the retailer brief.

16 And the reason we propose that is because the parties  
17 of the different levels of the supply chain have different  
18 duties and obligations and different defenses based on those  
19 duties and obligations. And it doesn't -- it doesn't make  
20 sense to have a motion to dismiss that deals with all of those  
21 duties and obligations as to the personal injury claim and  
22 then repeat that in large part as to the economic loss claims  
23 and then repeat that in large part as to the medical  
24 monitoring. And I say "repeat that," because by and large,  
25 the three master complaints, they assert many of the same

1 claims, and of course they share many of the same factual  
2 allegations.

3 But what the Court's dealing on this motion to  
4 dismiss is evaluating independently the different duties and  
5 obligations and different defendants that each level of the  
6 supply chain has. And we think that the most efficient way  
7 for the Court to do that is to look at them at each level on a  
8 stand-alone basis, and that's exactly what the Court's been  
9 doing through this entire litigation, acknowledging different  
10 levels of the supply chain have different duties and  
11 obligations.

12 THE COURT: Okay. So might it be the case, say, for  
13 example, it doesn't matter which group, let's take the  
14 retailers, that their motion might be divided into three  
15 sections? First section would be directed to the relevant  
16 portions of the personal injury complaint that they want to  
17 dismiss, then the medical monitoring, and then the economic?  
18 So there might be three sections in each of the three motions  
19 to dismiss?

20 MR. HONIK: Possibly, or another way to do it would  
21 be in the manufacturing defendant brief, for us to be saying  
22 something like, okay, now, motion to dismiss breach of express  
23 warranty, this claim is assertive in all three complaints and  
24 so the Court can decide it, as you decide it one time as to  
25 all three complaints.

1 But what we would do is streamline each brief to make  
2 sure that the Court isn't doing duplicative work.

3 THE COURT: Mr. Honik, let me stop you there. I know  
4 it's a little unusual, but I think in the context of this case  
5 what Mr. Goldberg is proposing makes sense. Rather than  
6 dealing with the separate complaint, deal with the claims of  
7 each of the three groups, because I think he's correct that at  
8 least in handling the case, and I think that would make it  
9 easier for Judge Kugler to decide, you can settle the  
10 manufacturing issues at one time, all the retailer issues at  
11 one time, all the wholesaler issues at one time and I think  
12 that might be a little bit easier than dealing with all the  
13 complaints.

14 MR. GOLDBERG: Judge, this is Seth Goldberg. Sorry.  
15 (Cross talk)

16 THE COURT: Getting back to the pages, Mr. Goldberg,  
17 let me confer with Judge Kugler. But can we just understand  
18 again what you're proposing? Let's use -- it doesn't -- use  
19 80 pages. Suppose Judge Kugler says 80 pages. You're saying  
20 that all of the motions or briefs should add up to 80 pages,  
21 not each one can be 80 pages, is what what you're saying?

22 MR. GOLDBERG: Correct, correct. And what we had  
23 proposed was that in given the number of defendants' number of  
24 issues, what we had proposed was a total of 120 pages for  
25 these three briefs so that they would all add up, all

1 together, the first round of briefing would be 120 pages and  
2 plaintiffs would have --

3 THE COURT: Here's my question, Mr. Goldberg. You  
4 would know this better than me, because luckily, I don't file  
5 motions anymore, but doesn't the local rules give each party  
6 40 or 45 pages? So why do you need leave to serve more pages?

7 MR. GOLDBERG: Well, right. I mean, the briefing one  
8 that is 40 pages when here, each party -- there are 50 parties  
9 so you would presumably have a lot more pages, each party  
10 would be entitled to 40.

11 THE COURT: No, no, no.

12 MR. GOLDBERG: So what we're doing at -- right. So  
13 what we're doing at 120 pages is saying, you know, each level  
14 of the supply chain would potentially have 40 pages. We're  
15 just trying to find a total number of pages that would allow  
16 us the opportunity to make all of the arguments for all of the  
17 defendants as to all of the claims.

18 THE COURT: I'm confused because --

19 MS. SMITH: Judge Schneider, I'm sorry to interrupt  
20 you. May I ask Mr. Goldberg a question?

21 Mr. Goldberg, this is Loretta Smith. Hi. If the  
22 total number of pages of your omnibus motion for all three  
23 kinds of defendants, if there's 120 pages and your proposal is  
24 that you would be able to determine what number of pages you  
25 could use to write up, for example, the manufacturers' MTD.

1 And a concern might be, I can anticipate Judge Kugler's  
2 question, is that, you know, might it be that you could  
3 consider a limit, or let's say the manufacturers' MTD, Mr.  
4 Goldberg, because I think, you know, an 80-page MTD brief for  
5 the manufacturers is something that would be a question for  
6 Judge Kugler.

7 MR. GOLDBERG: Sure. I'd like -- we want -- we are  
8 flexible in terms of, you know, is it 80, 100, 120. We just  
9 need the total number of pages to be able to make all of these  
10 different arguments on behalf of all of the different  
11 defendants. And if it were, you know, 50 pages for the  
12 manufacturers and 30 and 30 so that you have a total of 110,  
13 that would be fine.

14 If the Court wants to limit the entire set to  
15 80 pages and says, okay, defendants, you have 80 pages for  
16 these -- total for these three briefs, then, you know, we'll  
17 live with that.

18 It will be hard because there are so many different  
19 arguments that need to be raised. But all we're at -- we will  
20 live with -- if that makes sense for Judge Kugler, then we can  
21 live with that. If the Court wants to say, you know, three  
22 briefs at 40 pages each, so that each level of the supply  
23 chain is getting the amount allowable under the rules. But  
24 what we're trying to do is by -- we think the manufacturer  
25 brief needs to be longer because it's going to take on the

1 common issues.

2 So, you know, we would say 50, 30 and 30, and that  
3 way, you know -- and maybe that's the outer limit for the  
4 manufacturer defendant brief and each of the other two briefs  
5 get to be 30 pages.

6 MS. SMITH: Thank you.

7 THE COURT: Okay. Loretta, would you just touch base  
8 with Judge Kugler and get back to me?

9 MS. SMITH: I will.

10 THE COURT: Okay. We'll get back to you, counsel, on  
11 how many pages. Thanks for verifying that.

12 Next issue on the agenda was the plaintiffs' fact  
13 sheet deficiencies. I suppose we're going to hear more about  
14 that on the 27th.

15 MS. GOLDENBERG: Yes, Your Honor. This is Marlene  
16 Goldenberg for the plaintiffs. We had a productive meet and  
17 confer earlier this week where I think we were able to come to  
18 an agreement on most issues. We have been told by the  
19 defendants that we can expect to see a revised list of alleged  
20 deficiencies in advance of the next conference, and if we  
21 can't work through those, then they'll submit a list of cases  
22 to use for a show cause order and then let you know at that  
23 time if we have any issues with it.

24 THE COURT: No problem.

25 Anything with the short form complaint?

1 Ms. Rebecca: Yes, Your Honor, this is Alex Ruecka  
2 from Duane Morris on behalf of ZHP and the defendants. There  
3 is no current dispute about the short form complaints. We  
4 just raise that issue in our agenda to inform the Court that  
5 we had agreed to extend the deadline for fixing the short form  
6 complaints from March 23rd to May 20th so that we can review  
7 any that remaining deficient at the end of this month.

8 THE COURT: Perfect.

9 Last issue on the agenda, was the downstream  
10 briefing. I understand the situation we're in, and the  
11 briefing schedule extension is approved June 16th for the next  
12 brief. Response brief on June 22nd. So barring unforeseen  
13 circumstances, we'll argue those the end of June and hopefully  
14 get those decided at the same time.

15 Okay. That takes us through the agenda. Are there  
16 any other issues that anyone would like to raise or discuss?

17 MR. GOLDBERG: Nothing from defendants, Your Honor.

18 MR. SLATER: Nothing from the plaintiffs, I don't  
19 think, Your Honor.

20 MS. WHITELEY: Your Honor, this is Conlee Whitely. I  
21 do have one thing that we wanted to add to the agenda, if the  
22 you can indulge me.

23 THE COURT: Yes.

24 MS. WHITELEY: We just wanted to let the Court know  
25 that we're going to be filing in the next couple of days a

1 motion proposing a leadership for the other sartan cases, and  
2 we just wanted to warn you that was coming. It took some time  
3 to figure out who wanted to be involved and to what extent,  
4 but we have something prepared to send your way shortly.

5 THE COURT: Then perfect. Thank you. I neglected to  
6 raise that, but I have it in my notes, so much appreciated.

7 Okay. So we'll get back to you on the number of  
8 pages on the briefing and we'll enter an order confirming the  
9 schedules, the rulings, and as soon as we get confirmation  
10 about whether the end of the month is going to be in person or  
11 by phone, we'll get back to you.

12 Thank you, very much, everybody. We're adjourned.

13 (5:07 p.m.)

14 - - - - -

15  
16 I certify that the foregoing is a correct transcript  
17 from the record of proceedings in the above-entitled matter.

18  
19 /S/ Karen Friedlander, CRR, RMR  
20 Court Reporter/Transcriber

21 May 15, 2020  
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